

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BASIL SEGGOS, as Commissioner of the New York :
State Department of Environmental Conservation and : NO. 2:17-cv-02684-SJF-ARL
Trustee of New York State's Natural Resources, and the :
STATE OF NEW YORK, : **JOINT PROPOSED**
Plaintiffs, : **DISCOVERY SCHEDULE**
: :
: - against - :
: :
THOMAS DATRE, JR. et al., :
: :
Defendants. :
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Plaintiffs Basil Seggos, as Commissioner of the New York State Department of Environmental Conservation (“DEC”) and Trustee of New York State’s Natural Resources, and the State of New York (together “the State”) and twenty of the defendants¹ in this action (collectively, “Parties”) submit this joint proposed discovery schedule pursuant to Magistrate Judge Lindsay’s Order dated August 6, 2019. The Parties met and conferred about a discovery schedule on August 14, 2019. Eleven defendants, including nine defendants regarding whom the Clerk of Court issued a certificate of default, did not participate in the meet and confer.² No appearances have been entered for two defendants after their attorneys withdrew as counsel, and

¹ Those twenty defendants are IEV Trucking Corp.; COD Services Corp.; All Island Masonry & Concrete, Inc.; Building Dev Corp.; Dimyon Development Corp.; New Empire Builder Corp.; Cipriano Excavation Inc.; Touchstone Homes LLC; New York Major Construction Inc.; M & Y Developers Inc.; Atria Builders, LLC; Plus K Construction Inc.; Monaco Construction Corp.; Alef Construction Inc.; 158 Franklin Ave. LLC; ILE Construction Group, Inc.; East End Materials, Inc.; Sparrow Construction Corp.; Daytree at Cortland Square Inc.; and East Coast Drilling NY Inc.

² The defendants regarding whom the Clerk of Court issued a certificate of default are Christopher Grabe; Sam’s Rent, Inc.; Sukram & Sons Ltd.; Woori Construction Inc.; NY Finest Enterprises Inc.; Luciano’s Construction, Inc.; Ciano Concrete Corp.; Freedom City Contracting Corp.; and Total Structure Services Inc. See ECF No. 238. The other two defendants that did not meet and confer with the State are Triton Construction Company, LLC and Sams Rent and Construction.

those defendants also did not participate in the meet and confer.³ See ECF No. 338 (Order granting attorneys' motion to withdraw). The remaining defendant has been dismissed from the case.⁴ See ECF No. 230.

The Parties propose the following discovery schedule:

A. Subjects of Discovery. Limited discovery shall proceed within the scope set forth in the Court's Order dated August 5, 2019: "development of facts necessary to decide whether the [Comprehensive Environmental Response, Compensation, and Liability Act] claim was timely filed, including *inter alia*, the dates of closure of [Roberto Clemente] Park, the reasons for such closure(s), and the timing and extent of the State's awareness or knowledge of the release of hazardous substances at the site and of the effect of that release on the use of the Park." ECF No. 386 at pp. 9-10.

B. Discovery Schedule. Discovery shall be completed by October 21, 2019 pursuant to the Court's August 5 Order. *Id.* at p. 10. The following interim discovery deadlines shall also apply:

- i. Written discovery requests shall be served by email by August 21, 2019. Defendants shall endeavor to serve a single omnibus set of requests to the State. The Parties reserve the right to serve additional discovery requests.
- ii. Any objections to document requests shall be served by email by September 4, 2019.
- iii. The State proposes that the Parties complete production of documents

³ Those defendants are Thomas Datre, Jr. and 5 Brothers Farming Corp.

⁴ That defendant is "John Doe."

responsive to initial requests and respond to any other written discovery requests by September 20, 2019. Some defendants propose that documents be produced by September 11, 2019 in light of the outside deadline for limited discovery set by the Court. The State believes its slightly longer timeline is reasonable because the State will need to confirm potential DEC custodians of documents requested by defendants once the State receives those requests, instruct those custodians to search their hard-copy and electronic files for responsive documents, and then review those documents for responsiveness and privilege. In addition, the Parties have agreed to produce documents on a rolling basis, so defendants will receive responsive documents in tranches as responsive documents are identified by the State.

- iv. The Court's August 5th Order requires that depositions shall be completed by October 21, 2019. The Parties will determine how many depositions they intend to take after their review of discovery.

B. Production of Electronically-Stored Information. The identification and collection of electronic documents will be directly supervised by counsel and/or third-party vendors for the Parties, and the Parties agree to collect and produce electronic documents in a manner that preserves the customary fields of metadata intact. Where reasonably feasible, the Parties will produce electronic documents in TIFF format with Opticon/Concordance load files. The productions shall contain the "extracted text" of the electronic documents, as well as the customary fields of metadata. The Parties agree that certain electronic document formats, such as .XLS spreadsheets and other formats that the Parties shall agree upon, shall not be

produced in TIFF format, but instead will be produced in “native” format, with a “click-through” link in the respective Concordance database. Where the Parties determine that the foregoing manner of production set forth in this paragraph is not reasonable or feasible in proportion to the number of documents that would be produced or the costs that would be incurred with such a production, or in light of the limited scope of discovery, the Parties will produce electronic documents in another agreed-upon electronic and searchable form. The Parties will cooperate in determining the appropriate scope of production, including, without limitation, cooperation regarding the date ranges of relevant documents, identification of custodian files to be searched, and search terms to be used.

C. Notice of Third-Party Subpoenas. In accordance with Fed. R. Civ. P. 45(a)(4), any Parties serving third-party subpoenas shall provide notice of such subpoenas to the other Parties to this action and provide the other Parties a copy of all documents produced pursuant to the subpoenas.

Dated: August 21, 2019

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